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OFFICE OF PETITIONS

In re Application of
Lionel Wolovitz et al.
Application No. 09/889,306
Filed: July 13, 2001
Attorney Docket No. 5035-112US

ON PETITION

This is a decision on the petition filed April 24, 2007, under 37 CFR 1.181, to withdraw the holding of abandonment, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition under 37 CFR 1.181 is **GRANTED**.

The above-referenced application was held abandoned on April 14, 2005 for failure to file a timely response to the non-Final Office Action mailed January 14, 2005. Accordingly, a Notice of Abandonment was mailed August 23, 2005.

A review of the file record discloses that the non-Final Office Action and the Notice of Abandonment were both mailed to the same address and although the address to which they were mailed was the address on record, petitioner claims to not have received either. In support of their claim, petitioners assert that a search of the file jacket and docket records indicates that they were not received. Petitioners also provide copies of the docket records where the receipt and response would have been noted if correspondence would have been received from the USPTO.

A further review of USPTO records reveals that in October 2002, the address of record was changed although there does not appear to be any corresponding document requesting a change in the address of record. Additionally, the office action was returned by the addressee with a notation that it was improperly mailed and received at their address.

The statement and attachments corroborate that the office action mailed January 14, 2005 was mailed to the wrong address and thus not received. Since it also can't be discerned why the address of record was changed in October 2002, the holding of abandonment is withdrawn.

In view of the above, no petition fees are due and none have been charged.

The address has been changed back to the address of record prior to the errors committed in October 2002. It is acknowledged that the name of the firm may be different now but if petitioner desires any additional changes to the name or the address, petitioner will need to file a request for a correction so as to maintain the records in proper order and to minimize any further errors.

This matter is being referred to Technology Center 2642 for a re-mailing of the non-Final Office Action previously mailed January 14, 2005.

Telephone inquiries concerning this matter should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style with a large initial "P".

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions